



STATE OF CONNECTICUT

OFFICE OF POLICY AND MANAGEMENT

TESTIMONY PRESENTED TO THE PUBLIC HEALTH COMMITTEE *March 6, 2009*

Robert L. Genuario
Secretary
Office of Policy and Management

Testimony Supporting Senate Bill No. 845

AN ACT CONCERNING OVERSIGHT OF NURSING HOMES

Senator Harris, Representative Ritter and distinguished members of the Public Health Committee thank you for the opportunity to offer written testimony in support of Senate Bill No. 845 An Act Concerning Oversight of Nursing Homes.

Governor Rell recognizes that nursing homes are and will continue to be an important component of the continuum of care for Connecticut residents. Her proposal, as contained in this bill, takes proactive steps to improve nursing home financial accountability, which is an essential element to maintaining quality care. To implement this bill, Governor Rell's budget includes five new positions at the Department of Social Services.

In general, this proposal provides for greater state oversight over nursing home administration and management including ongoing financial monitoring and reviews of nursing homes. The bill includes:

Section 1 -- DPH website. Mandates that the DPH website have a link to the federal Nursing Home Compare database. Although the DPH website currently provides this link, mandating the requirement will ensure its continued presence and enhance the public's access to important data.

Section 2 -- Nursing Home Bed Need. Requires that DSS provide a report to the Human Services and Public Health committees by January 1, 2010, and annually thereafter, that identifies areas in the state that need or have a surplus of nursing home beds. Currently, DSS receives occupancy and resident day information by payer source in Medicaid annual cost report filings and nursing home occupancy levels are monitored on a quarterly basis through phone surveys. This reporting requirement ensures that the legislature is routinely apprised of nursing home utilization and need.

Section 3 – CON Review of Ownership Changes. Requires that nursing homes seeking to either transfer ownership or change control submit a CON application for DSS for approval. Currently, DSS is not involved with prospective new owners unless a buyer is requesting an interim rate increase. This section adds CON review criteria relating to an applicant's fiscal condition including financial viability, the impact on the facility's rate, property leases/debt and management service costs.

Section 4 – Oversight Committee. Reconstitutes the Nursing Home Financial Advisory Committee as an executive branch oversight committee to focus on financial solvency and quality of care issues. Nursing home owner representation is removed as it is not appropriate for competitors or representatives of facilities to participate in government financial oversight functions of other nursing facilities. The Long-Term Care Ombudsman is added to the committee and DSS would be responsible for reporting to the committee on Medicaid interim rate increase requests it receives from nursing facilities. The committee reports annually to the legislative committees of cognizance beginning January 2010 and meeting quarterly with legislative committee chairs beginning October 2009.

Section 5 – Expanded Financial Reporting. Requires that nursing homes submit quarterly reports of accounts payable to DSS. (Unpaid bills are a key indicator of financial health.) Requires submission of annual audited financial statements and provides that in situations of financial distress DSS may obtain additional information including debt agreements and interim financial statements. Provides authority to DSS to review the financial condition of management companies having facility ownership in other states in addition to its Connecticut facilities. If DSS identifies an adverse change in the financial condition of a facility, it will notify DPH and the Nursing Home Financial Oversight Committee. DSS would have the ability to require a facility to provide monthly reports on its cash availability, status of vendor payments and employee payrolls. If DSS determines that a nursing home facility is in financial distress that may lead to the facility having insufficient resources to meet its operating costs, DSS will issue a report of such findings to the legislative committees of cognizance and the Nursing Home Financial Oversight Committee.

Section 6 – Management Company Cost Reporting and Charge Limits . Establishes annual cost reporting for nursing facility management companies. Currently, Medicaid costs reports do not include comprehensive cost information for management companies. In addition, it requires that management company payments be limited to amounts allowed for Medicaid reimbursement purposes unless approved by DSS. The purpose of this provision is to limit management company charges to affordable levels that will not have a negative impact on direct services.

Section 7 – Technical Change Related to Oversight Statutes. Removes permissive statutory language related to nursing home oversight regulation that would be redundant to provisions of this bill.

Section 8 – Control of Debt and Lease Payments. A number of nursing homes have experienced financial difficulties as a result of over borrowing. This section requires that DSS, in consultation with the Banking Commissioner and the Connecticut Health and Educational Facilities Authority (CHEFA), establish reasonable rates of indebtedness and real property lease payments for nursing facilities and it requires that established limits not be exceeded without DSS approval. It also provides that debt proceeds be applied solely for the benefit of the nursing facility and establishes financial penalties for non-compliance.

Section 9 – Insurance Coverage Reporting. Requires that nursing facilities report on their liability and property insurance coverage to DSS and requires DSS to report to legislative committees of cognizance by January 2010. The purpose of this section is to assess current insurance levels and to assess whether specified minimum coverage amounts should be required of facilities.

Section 10 – Civil Penalties. Establishes civil penalties and appointment of a temporary receiver for any nursing home property owner who fails to repair or improve the facility in order to comply with the Public Health Code. This provides DPH with an enforceable mechanism to address landlords who do not respond to violations or who fail to implement plans to address issues of non-compliance.

Section 11 – Beneficial Ownership. Requires nursing home owners to provide DPH with the identities of all individuals and entities that have a beneficial ownership in such facility and clarifies the definition of beneficial ownership (ownership through any level or relationship of parent and subsidiary corporations and partnerships).

Section 12 – Subpoena Authority. Expands subpoena authority of DPH and DSS relating to oversight of nursing homes and nursing home operators.

Section 13 – Nursing Facility Management. Expands DPH's authority to investigate and to seek appropriate remedies to prevent nursing facility management service providers from operating without a certificate issued by DPH.

Section 14 – Change in Ownership. This section clarifies the information that DPH may require when evaluating a change in ownership application and strengthen DPH's authority to deny licensure to a nursing home owner who has been the subject of sanctions in the previous five years.

Section 15 – Receivership for Severe Financial Distress. Adds "severe financial distress" as a reason for appointment of a receiver for a nursing home facility and allows the court to appoint a receiver for related entities such as nursing home management companies and property owners.

Section 16 – Fair Rental Allowance. Requires that, for nursing homes in receivership, any court ordered rent or mortgage payments can not exceed amounts allowed under Medicaid rate setting regulations. This proposed change is necessary to ensure that any new court ordered payments do not adversely affect funding available for resident care.

Section 17 – Nursing Home Receivers. Reverses a 2003 change that required that receivers be licensed nursing home administrators by allowing courts to appoint individuals deem qualified based on experience and education. Prior to the 2003 change, receivers that were not licensed administrators, but having substantial health care or legal experience effectively carried out receivership responsibilities.

Section 18 – Nursing Facility Management Services. Clarifies and defines "nursing facility management services" certificate holder and expands the application information that these management companies must provide to DPH.

Section 19 and 20 – Technical Changes. Added by LCO.

Last year, Governor Rell submitted a similar legislative proposal. This bill represents the final language that was negotiated by the executive branch agencies - Department of Public Health, Department of Social Services, and the Office of Policy and Management - with the Office of the Attorney General and representatives of all four caucuses. Unfortunately, time ran out at the end of last session and the General Assembly did not enact the agreed-upon language before the end of the 2008 session.

As you may know, the Attorney General has submitted a similar proposal HB 6400 AAC the Strengthening of Nursing Home Oversight to the Human Services Committee for consideration. I am happy to report that we have already met with the Attorney General and developed language that bridges the gap between the minor differences in our two bills. Attached to my testimony, please find substitute language that we would request the Public Health Committee use when voting on this bill.

I would like to again thank the committee for the opportunity to present this written testimony. I respectfully request the Committee support this bill and, as always, my staff and I are available at your convenience to answer any questions you may have.

